

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION**

Ray Parisien for Tyson Parisien,)
& Tyson Parisien,)
Plaintiffs,)
vs.) Case No. 4:06-cv-015
)

United States of America,)
Defendant.)

)

ORDER RE MOTION TO COMPEL

Ray Parisien for Tyson Parisien, &)
Tyson Parisien,)
Plaintiffs,)
vs.)

United States of America,)
Defendant.)

)

Case No: 4:06-cv-016

The Plaintiffs aver that Henry Wright (“Wright”), an emergency medical technician employed by the Turtle Mountain Band of Chippewa (“Tribe”), contributed to Tyson Parisien’s injuries to the extent that he failed to provide adequate care when responding to Parisien’s motor vehicle accident on July 5, 2002. Specifically, they aver that Wright was physically incapable of providing adequate assistance to Parisien on account of a back injury.

On April 12, 2007 the Plaintiffs served on the Government a subpoena for all of Wright’s medical records for the ten year period preceding Parisien’s motor vehicle accident. In response, the Government advised the Plaintiffs that, while it would attempt to obtain a medical release from Wright, it could not release his records without written authorization.

The Plaintiffs filed a Motion to Compel on June 1, 2007, asserting that Wright's records "are not protected by HIPAA." In response, the Government first emphasized that Wright is not a party to this action. Stressing that Wright had not sought medical treatment at a federal facility, it also asserted that it lacks the authority to obtain his medical records from a third-party provider.

In focusing on HIPAA, the Plaintiffs miss the mark. It appears that the Government has not provided the Plaintiffs with Wright's medical records because it does not have possession of or access to Wright's medical records. It should also be noted that Wright is not a party to this action, as he is by all accounts employed by the Tribe as opposed to the federal government. This is not to say that the Plaintiffs lack the means of obtaining the information they seek, however. As the Government suggested, the Plaintiffs may approach Wright directly. If he is not cooperative, they may depose him as to the location of his medical records and then issue subpoenas to the medical care providers.

The Plaintiffs' Motion to Compel (Docket No. 20) is **DENIED**.

IT IS SO ORDERED.

Dated this 26th day of June, 2007.

/s/ Charles S. Miller, Jr.
Charles S. Miller, Jr.
United States Magistrate Judge